

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ISSAC MACIAS CORONADO,

Defendant and Appellant.

F036539

(Super. Ct. No. 0642787-6)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Ralph Nuñez, Judge.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, J. Robert Jibson and Charles A. French, Deputy Attorneys General, for Defendant and Respondent.

-ooOoo-

A jury convicted appellant, Issac Macias Coronado, of first degree murder (Pen. Code, § 187, subd. (a)),¹ kidnapping (§ 207, subd. (a)), and carjacking (§ 215, subd. (a)). The jury also found true the special circumstance allegation of murder in the commission of kidnapping (§ 190.2, subd. (a)(17)), as well as the allegations that appellant was personally armed with a firearm in the murder (§ 12022.53, subd. (b)) and personally discharged a firearm in the kidnapping (§ 12022.53, subd. (c)). The court sentenced appellant to life in prison without the possibility of parole plus 19 years.

Appellant contends that the trial court improperly discharged a juror and that there was insufficient evidence to support the special circumstance finding. We will affirm the judgment.

PROCEDURAL AND FACTUAL BACKGROUND

Victim Leticia Coronado suffered years of abuse, physical and psychological, from her husband, appellant, who was extremely jealous and controlling. Although appellant did not strike Leticia in front of their three children, he would order her to go to the garage with him; when they returned, Leticia would have fresh bruises.

Appellant's jealousy erupted again on February 8, 1999, at their home in Watsonville. Accusing her of having an affair, appellant inspected Leticia's body for evidence of sexual activity, then took her out for a drive. As they drove, appellant ordered Leticia to remove her clothes. Appellant finally parked in a remote location in "the woods." There, after again inspecting her body, appellant beat her, choked her, and pulled hair from her head and her pubic area. The bruising was so apparent when Leticia went to work the next day that her supervisor summoned the sheriff. Although initially

¹ Unless indicated otherwise, all subsequent statutory references are to the Penal Code.

hesitant to talk, Leticia eventually spoke with the officer, saying that she was “tired of living the way she was.” Appellant was arrested and spent three days in jail. On release, he found that Leticia had moved out, taking the children with her.

Leticia and appellant decided to try to work things out, and she and the children moved back home on March 1, 1999. However, Leticia made it clear that their relationship could not continue as before, that things had to change. For example, she would no longer go to a relative’s house for her lunch hour as appellant had formerly required her to do. As a result of the earlier incident, appellant was on probation and required to attend counseling.

On the evening of March 21, 1999, appellant and Leticia began to argue. As the argument escalated, Leticia told appellant that she was going to leave and reminded him that striking her would result in his return to jail. Appellant retorted “You’re not going to take my kids away,” and demanded her keys, which she surrendered. Neither of the two went to work on the 22d, nor was either home when their son returned from school that afternoon. After reading some letters appellant had left regarding what the family was to do should anything happen to appellant or Leticia, the son reported the couple missing. That evening, appellant hijacked a car in Fresno County and fled, eventually reaching Mexico.

The morning of the 23d, police found Leticia’s body in the trunk of appellant’s car, which had been abandoned in an “extremely isolated area” in western Fresno County. The windshield had a hole caused by a gunshot. Leticia was partially clothed in pajama bottoms and had a pair of handcuffs on her left wrist. Impressions in the dirt by the passenger side of the car indicated that her body had been dragged to the trunk. Autopsy revealed that Leticia had died of “smothering and multiple blunt impact injuries to the head.” The coroner described the beating as “severe.” The absence of blood in the trunk indicated that the victim was dead, or almost so, when placed there.

In the car, police found a tape recorder. On the tape, appellant addresses Leticia as they drive, describing how his situation has become intolerable since the arrest:

“[A]ll you do is argue with me ... all you do is to make me, make me cry ... cause you know that [I] can’t hit you ... you know that I can’t talk back to you, you know that anything I do ... ‘I’m gonna call [Leticia’s brother] to pick me up,’ or you’re gonna send me to jail. I’m tired of the threats. I warned you, I warned you ... that if you made those threats that I was gonna do something bad. I warned you ... I said you’re gonna be sorry if you keep on doing that....”

As Leticia begs for her life, appellant repeatedly states that he is going to kill her. “I’ve kidnapped my wife . . . and I am going to kill her.” “You fucked up. I hit you in the head, I’m going to jail, I shot a gun, I have a gun. I’m ... supposed to have a gun. I kidnapped you, now they can say I kidnapped you.” “How does it feel to know you’re gonna die? I want you to tell me.” “Too late girl! You’re gonna die!” When Leticia apologizes, appellant states “You would never talk to me like this if I didn’t have a gun in my hand.” At one point, appellant acknowledges that he has just hit Leticia.

Appellant also addresses his children and laments that he will never see them again, “[b]ut, I have to do what I have to do! Cause this woman was treating me terrible.” Appellant also provides information about his finances, asks relatives to look after his children, and names staff in the police and probation departments and child support services who interfered in his life postarrest and thus are also to blame for what he is doing.

Defense

Appellant testified that the night of the 21st, he and Leticia left the house at approximately 10:30 or 11:00 p.m. to take a drive and talk. In the car, Leticia grabbed a gun that appellant had, causing the gun to discharge and put a bullet through the windshield. Appellant acknowledged that he recorded their conversation and that the voices on the tape were his and Leticia’s. However, he testified that he could not explain

why he said the things he did that night. “I started going crazy.” “Something went very wrong and I can’t understand it still.”

Appellant testified that he could not remember much of the incident, but that at some point he told Leticia to handcuff herself, which she did. “I think she knew I wasn’t right.” Appellant said that he had a moment of clarity when he realized the car needed gas. Afraid that Leticia might try to get help at the gas station, he told her to get in the trunk, which again she did willingly. She had no bruises at this time. After that, his memory was again vague. However, he knew that Leticia never got out of the trunk after that. When appellant abandoned the car, Leticia was still alive and screaming to him as he left, “Issac. Issac, don’t leave me here.”

Appellant acknowledged sending letters to family around the time of the murder, including one in which he stated that he had proof that Leticia had had an affair and that “I must do what I must do. See that my kids get guidance and hope.” However, he said that he never intended to kill Leticia. Appellant acknowledged that there had been abuse in the marriage, but not as much or as severe as the prosecution made it seem. And when they fought, it would be Leticia who would hit first. “She didn’t have no black eyes or bruises. What it was is she had age spots.”

DISCUSSION

The Trial Court Acted Within Its Discretion in Excusing Juror No. 8

Factual Background

Prior to argument, the court called Juror No. 8 into the courtroom outside the presence of the other jurors:

“THE COURT: The reason I’ve had you brought into the courtroom without the other jurors,... is that I’ve been provided some police reports and other documents that give me some information that you’ve been the victim of spousal abuse or cohabitant abuse. Individuals involved were Trevor Reed and a Sean Robinson on two separate occasions, and there was another incident less serious. And the concern I have is that during the

questioning of the jurors when we first started this case, when requests were asked either of the panel generally or you specifically concerning that issue, you remained silent, didn't say anything. And it seems to me that, in fact, you have been the victim of that type of abuse. I mean, it's a concern, obviously we get to this stage of the proceedings and find out perhaps you were a victim and for some reason didn't say anything."

The juror responded that in the case of Reed, she was not a victim, as she apparently had explained at the time in a letter to the court specifying that "nothing happened here." With regard to Robinson, she said, "I did get hit. Yes, I did." The juror then explained that she had not mentioned these events because "[i]t just wasn't a big thing. It didn't effect me. That's done, over with."

The court also asked the juror about a robbery that occurred while she was working at a market. The juror claimed to be in the back office, unaware of the robbery until afterward. When the court observed that "I thought he came in and actually talked to you and told you not to turn around, not to look at him?" The juror said that she was "still in the office. I forgot all about that."

Concerned about possible bias to either the prosecution or the defense, the court excused the juror. The prosecutor then pointed out that his office had prosecuted Reed for murder "some number of years ago," that the record reflected that Juror No. 8 had been Reed's girlfriend at that time, and that she had also failed to mention this fact despite the prosecutor's specific request that prospective jurors disclose "whether friends, family, loved ones, have been prosecuted by this office and/or had they followed a murder trial."

Defense counsel objected to the juror's discharge, arguing that she was simply a quiet, and "undemonstrative kind of person," and that she was only once a victim of domestic violence, in the Robinson incident, which she characterized as "not a big deal." The court disagreed:

"I differ somewhat in my evaluation of [Juror No. 8]. I thought she was pretty bright. A little on the quiet side. Didn't share too much. But I

thought her answers generally were thoughtful. She thought about her answers. That's pretty dramatic stuff, the things that have happened in her life, and for her not to bring it out to our attention, it's sort of amazing to me. She was a victim of robbery in the last case I mentioned, the store."

The court also disagreed with the juror's characterization of herself as not being a victim in the Reed incident, for which Reed was not only prosecuted, but convicted and sentenced to prison:

"As to Terrel Reed, there's no indication there was physical violence against her, but there was certainly a lot of arguing. In that case Mr. Reed went into her home and displayed a tech nine, some weapon of that nature, and told her to get out of the house. Not to share that, I think, is leaving [out] a lot."

Analysis

"Section 1089, in relevant part, states: 'If at any time, whether before or after the final submission of the case to the jury, a juror dies or becomes ill, or upon other good cause shown to the court is found unable to perform his duty,... the court may order him to be discharged'" (*People v. Bell* (1998) 61 Cal.App.4th 282, 286-287.) "The decision to discharge a juror rests within the sound discretion of the trial court. [Citation.] The court must make a reasonable inquiry to determine whether the person in question is able to perform the duties of a juror. [Citation.] If the answer is in the negative, the inability to perform those duties must be shown on the record to be a 'demonstrable reality.' [Citation.]" (*Id.* at p. 287.) "An abuse of discretion occurs where the court's decision exceeds the bounds of law or reason. [Citation.] However, it is important to note while many courts have considered the matter, few have disturbed a trial court's decision to discharge a juror for good cause. [Citation.]" (*Ibid.*)

"A juror's misconduct is good cause which, under the provisions of either section 1089 or 1123, may permit the court to replace him or her with an alternate,... [Citation.]" (*People v. Diaz* (1984) 152 Cal.App.3d 926, 934.) "It is well established that '[a] juror who conceals relevant facts or gives false answers during the voir dire examination thus

undermines the jury selection process and commits misconduct. [Citations.]’ [Citation.]” (*People v. Majors* (1998) 18 Cal.4th 385, 417.) “In determining whether misconduct occurred, ‘[w]e accept the trial court’s credibility determinations and findings on questions of historical fact if supported by substantial evidence. [Citations.]’” (*Ibid.*)

Appellant contends that nothing showed Juror No. 8 was unable to perform her duties, since she had merely neglected to mention some “trivial or forgotten incidents” and she had stated that she was certain these incidents would not affect her performance as a juror. Appellant’s argument, of course, relies on the juror’s credibility. Here, the number of omissions, as well as the extent of the discrepancies between the juror’s characterization of events and the facts found by the court, support the conclusion that the juror was not credible in this matter. Having found the juror not credible as to the nature of her experiences, the court was also entitled to find suspect her statements as to the effect those experiences had, or did not have, on her outlook and attitudes. The court was well within its discretion to discharge Juror No. 8.

Sufficient Evidence Supports the Special Circumstance Finding of Murder in the Course of a Kidnapping

“A felony-murder special circumstance ... may be alleged when the murder occurs during the commission of the felony, not when the felony occurs during the commission of a murder. [Citations.]” (*People v. Mendoza* (2000) 24 Cal.4th 130, 182.) “Thus, to prove a felony-murder special-circumstance allegation, the prosecution must show that the defendant had an independent purpose for the commission of the felony, that is, the commission of the felony was not merely incidental to an intended murder.” (*Ibid.*) ““Concurrent intent to kill and to commit an independent felony will support a felony-murder special circumstance. [Citation.]’” (*Id.* at p. 183.)

Appellant contends the evidence is insufficient to establish that the kidnapping was anything other than a mere incident of the murder itself. To the contrary, he argues,

the tape and the letters establish “clearly and unequivocally” that the sole purpose of the kidnapping was to end Leticia’s life.

We must therefore determine here whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have concluded that defendant had a purpose for the kidnapping apart from the murder. (*People v. Raley* (1992) 2 Cal.4th 870, 902.) We conclude the evidence is sufficient to establish that defendant kidnapped Leticia with “independent, albeit concurrent, goals.” (*People v. Clark* (1990) 50 Cal.3d 583, 609.)

The tape supports the conclusion that appellant did not kidnap Leticia just to kill her but also first to torment her. It was hardly necessary to drive from Watsonville to Fresno County to find a remote location at which to kill Leticia. Rather, the journey suggests that appellant sought to subject Leticia to prolonged captivity before finally killing her. And his statements and actions during the ordeal establish that his purpose then was to inflict retaliatory pain, fear, humiliation, and terror, renewing his control and her subjugation. “Hey ... just like I was begging you, huh? When I was on my knees . . . to take me back, huh?” “How does it feel to know you’re gonna die? I want you to tell me.” “Do you know how much I suffered? No, you have no idea, but you have an idea now.”

As the prosecutor argued on closing, appellant “was not going to be satisfied with killing this woman. She had to pay and she had to pay dearly with more than her life.” Sufficient evidence supports the special circumstance finding.

DISPOSITION

The judgment is affirmed.

Buckley, J.

WE CONCUR:

Vartabedian, Acting P.J.

Cornell, J.